



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pan Am World Services, Inc.

File: B-235976

Date: September 28, 1989

DIGEST

1. In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting agency enjoys a reasonable range of direction, and we will not question a determination of the technical merit of proposals unless it is shown to be arbitrary.
2. Whether awardee will be able to perform contract using employees whose resumes were included in awardee's proposal is a matter of responsibility and General Accounting Office will not review agency's affirmative determination of awardee's responsibility absent showing of possible agency fraud or bad faith or alleged failure to apply definitive responsibility criteria.
3. Protest is denied where there is no indication alleged error in evaluating proposals adversely affected the protester's competitive standing.
4. Award to higher priced, higher technically rated offeror is not objectionable where technical consideration outweighed cost in solicitation award criteria, and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

DECISION

Pan Am World Services, Inc., the incumbent contractor, protests the award of a contract to Inter-Con Security Systems, Inc. under request for proposals (RFP) No. F04689-88-R-0005, issued by the Department of the Air Force for security police services at Onizuka Air Force Base, California. Pan Am argues that the agency improperly evaluated the proposals.

We deny the protest.

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The RFP contemplated award of a fixed-price contract with award fee provisions for a basic period of three months, and four 1-year option periods. Offerors were required to submit separate technical, management and price proposals. The RFP advised that 2 evaluation areas would be used for source selection: technical/management and cost, and that technical/management aspects would receive primary emphasis. Within the technical/management area, the following factors were of equal importance: physical security, resource protection, past performance, personnel management, organization structure, training and quality control. The contract was to be awarded "to the offeror whom the government determines can best satisfy the objectives and requirements set forth in the RFP in a manner considered most advantageous to the government."

Several offerors submitted initial proposals by March 24, 1989. After establishing the competitive range and conducting written discussions through the use of deficiency reports (DRs) and clarification requests (CRs), the agency requested best and final offers (BAFOs) by May 26, 1989. Inter-Con's proposal was judged to offer the best overall value, based on its superior technical evaluation (rated exceptional (blue) in six areas, acceptable (green) in one area, with an overall rating of blue). Though Inter-Con's price was higher than Pan Am's, the agency determined that the superiority of Inter Con's proposal over the Pan Am proposal (rated green in five areas, blue in two areas, with an overall rating of green) more than offset the higher Inter-Con price. On June 15, the Air Force telephonically advised Pan Am of award to Inter Con. Pan Am requested a debriefing, which was provided on June 21. This protest followed.

Pan Am protests that the Air Force failed to evaluate past performance in accordance with the RFP's evaluation criteria, failed to verify that Inter-Con's proposed key personnel would be available to work on the contract, and unfairly evaluated Pan Am's proposal.^{1/}

^{1/} Initially, Pan Am also alleged that the Air Force evaluation was biased, that Inter-Con was scored higher because it offered services not required by the RFP, and that Pan Am was improperly downgraded for its proposed use of a Patrol Manager system. Because the Air Force rebutted these arguments in its report on the protest, and the protester did not pursue these bases of protest in its comments, we consider them abandoned. See Network Solutions, Inc., B-234569, May 15, 1989, 89-1 CPD ¶ 459.

At the outset, we note that it is not the function of this Office to evaluate technical proposals. Rather, we will examine an agency's evaluation only to insure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. The determination of the merits of proposals, particularly with regard to technical considerations, is primarily a matter of administrative discretion which we will not disturb unless it is shown to be arbitrary. United HealthServ. Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. A protester's disagreement with the agency's judgment is itself not sufficient to establish that the agency acted arbitrarily. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

Pan Am first contends that the Air Force failed to evaluate past performance in accordance with the RFP's evaluation criteria. Pan Am argues that the Source Selection Plan, unlike the RFP evaluation criteria, did not include past performance as a technical evaluation factor. Furthermore, Pan Am notes, past performance was the only technical or management factor not assigned a color score in accordance with the agency's color evaluation system. Thus, concludes Pan Am, the Air Force did not differentiate between the strength of different offerors in regard to past performance.

Our review of the record indicates otherwise. The RFP evaluation criteria provision on past performance provided that:

"The government will assess the offeror's past performance of similar performance requirements using the below criteria - i. The Government will assess the offeror's past abilities to satisfy technical requirements or previous requirements. The Government will give particular attention to contracts requiring similar services."

Our review of the Air Force's Proposal Analysis Report, a comparative analysis of proposals, shows that the Air Force considered offerors' past performance in accordance with this criteria. For example, the evaluation team rated Inter-Con exceptional on the past performance factor, noting the high similarity between the RFP's duties and those performed by Inter-Con in the past, and citing Inter-Con's performance "on similar contracts which were successfully fulfilled for at least two years." The evaluation team rated Pan Am exceptional, citing its "success in fulfilling contracts highly similar to the RFP for over two years with no record of default." Other offerors with less similar experience were not rated as high. Though Pan Am asserts

that the Air Force did not take into account Inter-Con's past performance at Onizuka Air Force Base (AFB), the source selection decision document cites Inter-Con's "proven track record at Onizuka AFB."

Pan Am's objection to the absence of a color score for past performance in the source selection plan does not itself provide a basis for questioning the validity of the award selection. Source selection plans are internal agency instructions and as such do not give outside parties any rights. See Quality Sys. Inc., B-235344 et al., Aug. 31, 1989, 89-2 CPD ¶ _____. Nonetheless, the agency is required to follow the evaluation scheme set forth in the RFP and to conduct its evaluation in a manner so as to reach a rational result. Id. Here, as indicated above, the agency followed the RFP evaluation scheme, even though past performance was not assigned a color score in the Proposal Analysis Report.

Pan Am also protests that the Air Force did not verify that Inter-Con's proposed key personnel would be available to work on the contract, and states its belief that Inter-Con's proposed project manager is not performing on the contract. Whether Inter-Con could or would perform the contract with its proposed personnel, however, relates to Inter-Con's responsibility as a prospective contractor. The Air Force has determined that Inter-Con is a responsible concern, and our Office will not review such an affirmative responsibility determination absent a showing of possible agency fraud or bad faith or an alleged agency failure to apply properly definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5) (1989); Ship Analytics, Inc., B-225798, June 23, 1987, 87-1 CPD ¶ 621. These circumstances are not present here. Furthermore, the substitution of personnel after award is a matter of contract administration not for consideration by our Office.^{2/} 4 C.F.R. § 21.3(m)(1). Management Engineers, Inc., et al., B-233085 et al., Feb. 15, 1989, 89-1 CPD ¶ 156.

Pan Am also contends that the Air Force unfairly evaluated its proposal, and cites several examples. It objects to the Air Force's downgrading its proposal for failure to clarify when or how management personnel would receive quality control evaluations (QCEs) on their wartime/contingency duties. Pan Am contends that it specifically addressed the issue in its BAFO, and even if the issue was not adequately addressed, it appears trivial from an evaluation stand-point.

^{2/} We have been advised by Inter-Con that the program manager it proposed is performing.

The Air Force replies that wartime/contingency duties provide for the security support of Onizuka Air Force Base during major accidents, disasters, robberies, hostage situations, and other unforeseen events. The purpose of a QCE, the Air Force states, is to evaluate the fitness of an employee to perform a prescribed job, and the QCE demonstrates proficiency prior to the actual fulfillment of the performance requirement. According to the Air Force, lack of proper QCE could result in unqualified employees carrying out critical jobs for which they are not trained and proficient.

The Air Force argues that Pan Am's BAFO did not adequately address when or how management personnel would receive QCEs, since the only BAFO reference is a note added at the bottom of a performance evaluation table stating that: "Management personnel who are performing in one of these positions while on wartime/contingency duty will receive quality control evaluation in accordance with AFR 125-28, Chapter 8(C1) and AF Form 1098s developed for these positions." The Air Force interpreted this note to indicate management personnel would only receive a QCE during their respective wartime/contingency duties. The Air Force argues this approach is unsound, since the clear intention of a QCE is to ensure proficiency prior to performing a task.

We do not find unreasonable the Air Force's conclusion that Pan Am was not planning to conduct quality control evaluations of its management personnel until wartime or contingency conditions. The BAFO's use of the words "while on wartime/contingency duty" reasonably suggests that the QCEs would take place during task performance. We find justifiable the Air Force position that QCEs are needed before emergency conditions arise to ensure that critical functions are likely to be performed effectively and efficiently under such conditions, when the opportunity to train may not exist.

Pan Am also contends that the Air Force unfairly downgraded its proposal based on its proposed Operations Officer responsibilities. The Air Force criticized Pan Am's proposed manning, which deleted two superintendent positions that existed in its incumbent contract, because it felt such deletion would create an unrealistic workload on the Operations Officer. Pan Am argues that the deletion was consistent with the RFP's Performance Work Statement (PWS), which listed qualification requirements for most other categories of management positions included in its incumbent contract, but did not list qualification requirements for the two superintendent positions. Pan Am further argues that, in any event, the Air Force unreasonably chose to

disregard its commitment as an incumbent contractor, familiar with the required workloads, to ensure that all functions assigned to the Operations Officer were properly carried out.

The Air Force replies that the PWS was carefully designed to specify functions to be performed, not resources to be used to perform those functions. According to the Air Force, the PWS was designed to give each offeror full range to propose economies in methods of performance, subject to evaluation by source selection officials of the advantages and disadvantages of any economies proposed. Though the former PWS did specify personnel positions and organizational structures, the Air Force states, the present RFP was drafted to correct the perceived defect in the old contract. Thus, the Air Force argues, the PWS did not delete the superintendent positions, rather, Pan Am did so, in the face of the following explicit Clarification Request: "Your proposal levies considerable program management responsibilities on the Operations Officer. Do you feel that this workload can be adequately performed by one person?" The Air Force was concerned that the functions Pan Am assigned to the Operations Officer, which were formerly performed by three men, would seriously overburden the officer. Though Pan Am responded by stating that its Operations Officer was experienced, that the workload would be monitored, and other resources may be used for short term projects, the Air Force maintained its concern that critical functions would be jeopardized through the assignment of the functions to one person.

Based on our review of the record, we find that the Air Force had a reasonable basis for downgrading Pan Am's proposal based on the workload assigned the Operations Manager. We agree with the Air Force that the PWS specified functional tasks for which offerors were to propose approaches to accomplish. Section L of the RFP clearly required offerors in the Management Proposal to "show how you plan to staff, manage and control the Contract Security Police force to ensure satisfactory performance." Pan Am implicitly recognized its discretion in defining its approach in its Management Proposal where it stated:

"Our project organization was thoroughly analyzed by our Program Manager, senior corporate management and senior security managers from our other projects with similar security responsibilities. From this review and analysis we effectively eliminated one tier of management, the law enforcement and security superintendents, as

redundant. We accomplished this through reallocation of the duties and responsibilities of the superintendent level."

Concerning Pan Am's contention that the Air Force unreasonably disregarded its commitment as an incumbent contractor, familiar with required workloads, to ensure all functions were properly carried out, there is no legal basis for favoring a firm with presumptions on the basis of past performance; it must demonstrate capabilities in the proposal that were required by the RFP to be addressed. See Laser Power Technologies, Inc., B-233369 et al., Mar. 13, 1989, 89-1 CPD ¶ 267. Furthermore, we have previously held that downgrading an offeror's BAFO for inadequate staffing, where that concern was the earlier subject of discussions, is reasonable. See Pan Am World Servs. Inc., et al., B-231480 et al., Nov. 7, 1988, 88-2 CPD ¶ 446. We find the Air Force has reasonably explained its evaluation of Pan Am's proposal in this regard; the fact that Pan Am disagrees with the agency evaluation does not in itself render the evaluation unreasonable. Mark Dunning Indus. Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364; reconsideration denied, B-230058.2, May 26, 1988, 88-1 CPD ¶ 503.

In comments on the agency report, Pan Am also contends that the source selection criticism of Pan Am's proposed alarm systems manager's duties was unreasonable. The Air Force found that "Pan Am proposes to make incident investigations an additional duty for their alarm systems manager. Clearly, such a duty would detract from his critical duty managing the alarm system for Priority A resources." According to Pan Am, the Air Force ignored Pan Am's statement, in a response to a clarification request, that its alarm systems manager would not perform investigative functions.

We do not find the Air Force's position unreasonable. Though Pan Am stated in response to a clarification request that it had elected to designate in-place employees to perform the investigation function, it stated in its BAFO that "The Alarm Systems Manager will assume the additional duties as the primary Security Police Investigator" Clearly, the Air Force was justified in relying on the more recent statement in Pan Am's BAFO when evaluating the proposed duties for the alarm systems manager.

Pan Am also objects in its comments to the conclusion in the Air Force's Proposal Analysis Report that Pan Am was not familiar with the subject and content of OPlan 207, Base Security Plan (Contingency Operations), because its proposal

stated that the OPlan 207 dealt with normal security operations, an entirely different subject. Pan Am argues that this conclusion is unreasonable because it drafted OPlan 207 for the Air Force's approval, and because it demonstrated it understood OPlan 207 when, in response to a clarification request, it stated that "The OAFB installation OPlan 207 we have developed is the basic planning document for contingency operations. It outlines emergency physical security operations for the protection of Onizuka AFB. It also outlines action that will prevent or dissuade an individual or group of individuals from attempting acts of disruption, terrorism, robbery, theft, sabotage, or vandalism against priority resources assigned to OAFB."

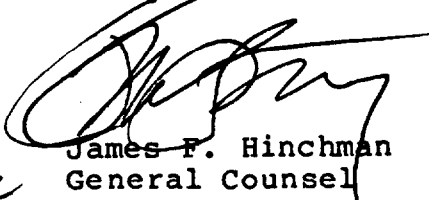
We are puzzled by the Air Force's criticism of Pan Am's familiarity with OPlan 207 in the Proposal Analysis report, given Pan Am's response to the clarification request cited above, and considering that the Air Force's evaluation narrative of Pan Am's proposal states that Pan Am "clearly illustrated their understanding of the contents of the base OPlan 207." We do not find that Pan Am was competitively prejudiced by the criticism in the Proposal Analysis Report, however, since it is unlikely that its acceptable rating for the physical security factor would have been raised to exceptional absent the criticism. See Quality Sys. Inc., B-235344 et al., supra. First, even the evaluation narrative which credited Pan Am with understanding OPlan 207 found Pan Am's proposal acceptable on the physical factor. Second, the Proposal Analysis Report noted that Inter-Con's proposal demonstrated strong understanding of the Air Force Physical Security Program by discussing at length the various aspects of that program, while noting that Pan Am's proposal briefly defined physical security as opposed to discussing the program in an in-depth manner. Moreover, even if Pan Am's rating of green (acceptable) on the physical security factor is changed to blue (exceptional), making the firm equal to Inter-Con on this factor, Inter-Con would still have a higher overall technical rating. Since the protester has shown no prejudice, we deny its protest on this basis.

Pan Am also questions the Air Force decision to award a contract to Inter-Con because Inter-Con's price was \$540,928 more than Pan Am's proposed price, and the Air Force allegedly did not find Inter-Con's proposal vastly superior to Pan Am's.

Our review of the record indicates that the Air Force source selection authority (SSA) determined that the "excellent characteristics" of Inter-Con's proposal more than offset the "small," i.e., 3 percent, difference in total cost

between the Inter-Con and Pan Am proposals. The SSA cited, among other things, Inter-Con's outstanding understanding of the Air Force Physical Security Program, its superior knowledge and understanding of the Resources Protection program, and its outstanding quality control program. This Air Force determination has not been shown to be unreasonable. In this regard, award to a higher-rated, higher-cost technical proposal is not objectionable where, as here, the solicitation award criteria made technical considerations substantially more important than cost, and the agency reasonably concluded that the awardee's superior proposal provided the best overall values. See Dynamic Sys. Inc., B-233282, Feb. 15, 1989, 89-1 CPD ¶ 161. We therefore find no basis to object to the Air Force's selection of Inter-Con.

The protest is denied.


for James F. Hinchman
General Counsel